

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 182

SENATE BILL 1123

AN ACT

AMENDING SECTIONS 28-401, 28-7653, 28-7654, 28-7655, 28-7656, 28-7657, 28-7658 AND 42-5032, ARIZONA REVISED STATUTES; PROVIDING FOR CONDITIONAL ENACTMENT; RELATING TO BRIDGE CONSTRUCTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-401, Arizona Revised Statutes, is amended to
3 read:

4 28-401. Intergovernmental agreements

5 A. The department may contract under title 11, chapter 7, article 3
6 with a state public agency in this state or any other state if the general
7 welfare of this state will be promoted and protected and if not in conflict
8 with any other law.

9 B. The director shall enter into agreements on behalf of this state
10 with political subdivisions or Indian tribes for the improvement or
11 maintenance of state routes or for the joint improvement or maintenance of
12 state routes.

13 C. The department may enter into an intergovernmental agreement
14 pursuant to title 11, chapter 7, article 3 with a county with a population
15 of more than two million persons according to the most recent United States
16 decennial census for the construction, design, acquisition and attendant
17 acquisition costs of a county highway bridge to provide direct access to
18 commercial, residential and recreational facilities. The agreement shall:

19 1. Contain the commitment of the county to pay other monies for the
20 purpose of financing the bridge.

21 2. State the responsibilities of each party with regard to planning,
22 designing, constructing, owning and maintaining the bridge.

23 3. Provide that payment for the costs of the bridge shall be made from
24 contributions from the parties to the agreement and other contributors before
25 the use of state transaction privilege tax distributions.

26 D. THE DEPARTMENT MAY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
27 PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3 WITH A COUNTY WITH A POPULATION
28 OF MORE THAN TWO MILLION PERSONS FOR THE DESIGN, RECONSTRUCTION AND
29 IMPROVEMENT COSTS OF A COUNTY HIGHWAY APPROACHING AND TRAVERSING A BRIDGE
30 CONSTRUCTED PURSUANT TO SUBSECTION C OF THIS SECTION. THE AGREEMENT SHALL:

31 1. CONTAIN THE COMMITMENT OF THE COUNTY TO PAY OTHER MONIES FOR THE
32 PURPOSE OF FINANCING THE HIGHWAY IMPROVEMENTS.

33 2. STATE THE RESPONSIBILITIES OF EACH PARTY WITH REGARD TO PLANNING,
34 DESIGNING, CONSTRUCTING, OWNING AND MAINTAINING THE HIGHWAY.

35 3. PROVIDE THAT PAYMENT FOR THE COSTS SHALL BE MADE FROM CONTRIBUTIONS
36 FROM THE PARTIES TO THE AGREEMENT AND OTHER CONTRIBUTORS BEFORE THE USE OF
37 STATE TRANSACTION PRIVILEGE TAX DISTRIBUTIONS.

38 4. PROVIDE FOR REIMBURSEMENT TO THE STATE GENERAL FUND OF THE AMOUNT
39 OF HIGHWAY IMPROVEMENT REVENUES PAID TO THE HIGHWAY IMPROVEMENT INTEREST FUND
40 OR REDEMPTION FUND UNDER SECTION 28-7656, SUBSECTION B ON THE VOLUNTARY
41 CONVEYANCE OF A MAJORITY OWNERSHIP INTEREST IN A SPORTS ENTERTAINMENT
42 FACILITY AS PRESCRIBED BY SECTION 42-5032, SUBSECTION B.

43 5. CONTAIN THE REPRESENTATION OF THE COUNTY THAT IT HAS THE LEGALLY
44 BINDING ASSURANCE OF THE OWNER OF A SPORTS ENTERTAINMENT FACILITY AS DEFINED
45 IN SECTION 42-5032, SUBSECTION E, THAT THE OWNER WILL REIMBURSE THE COUNTY

1 FOR ANY AND ALL EXPENSE THE COUNTY MAY INCUR UNDER SUBSECTION D, PARAGRAPH
2 4 OF THIS SECTION AND SECTION 42-5032, SUBSECTION B.

3 6. BE SUBMITTED TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS
4 REVIEW BEFORE THE EXECUTION OF THE AGREEMENT.

5 ~~D.~~ E. The department may enter into agreements with Indian tribes to
6 provide a method or formula to refund taxes paid on exempt motor fuel
7 purchases or use pursuant to this title. For the purposes of this
8 subsection, "motor fuel" has the same meaning prescribed in section 28-5601.

9 ~~E.~~ F. The department may enter into an intergovernmental agreement
10 pursuant to title 11, chapter 7, article 3 that obligates the department to
11 indemnify and defend a city, town, county, flood control district, irrigation
12 district or agricultural improvement district or any other political
13 subdivision or governmental agency against claims of liability for injuries,
14 losses or damages incurred in any way as a result of the acts or omissions
15 of the department, including acts, errors, omissions or mistakes of any
16 person for which the department may be liable, and arising out of the
17 construction, operation or maintenance of department projects or facilities
18 or use of department projects or facilities. A city, town, county, flood
19 control district, irrigation district or agricultural improvement district
20 or any other political subdivision or governmental agency may enter into an
21 intergovernmental agreement pursuant to title 11, chapter 7, article 3 that
22 obligates such an entity to indemnify and defend the department against
23 claims of liability for injuries, losses or damages incurred in any way as
24 a result of the acts or omissions of such entity, including acts, errors,
25 omissions or mistakes of any person for which the entity may be liable, and
26 arising out of the construction, operation or maintenance of projects or
27 facilities or use of projects or facilities. Any indemnification pursuant
28 to an intergovernmental agreement must be approved by state risk management
29 in the department of administration.

30 Sec. 2. Section 28-7653, Arizona Revised Statutes, is amended to read:

31 28-7653. Bonds secured by bridge construction revenues; bonds
32 secured by highway improvement revenues

33 A. If a majority of the members of the county board of supervisors
34 authorizes the issuance of bonds SECURED BY BRIDGE CONSTRUCTION REVENUES by
35 resolution dated before July 1, 1998, the county may issue the bonds so
36 authorized in the manner provided in this article. The bonds SECURED BY
37 BRIDGE CONSTRUCTION REVENUES may be authorized in an aggregate principal
38 amount of not more than five million dollars.

39 B. IF A MAJORITY OF THE MEMBERS OF THE COUNTY BOARD OF SUPERVISORS
40 AUTHORIZES THE ISSUANCE OF BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES BY
41 RESOLUTION DATED BEFORE DECEMBER 31, 2004, THE COUNTY MAY ISSUE THE BONDS SO
42 AUTHORIZED IN THE MANNER PROVIDED IN THIS ARTICLE. BONDS SECURED BY HIGHWAY
43 IMPROVEMENT REVENUES MAY BE AUTHORIZED IN AN AGGREGATE PRINCIPAL AMOUNT OF
44 NOT MORE THAN FIVE MILLION DOLLARS.

1 C. ALL PROCEEDS, REVENUES, ACCOUNTING AND PAYMENTS WITH RESPECT TO
2 BONDS SECURED BY BRIDGE CONSTRUCTION REVENUES PURSUANT TO THIS ARTICLE SHALL
3 BE CONDUCTED AND MAINTAINED SEPARATELY FROM THOSE WITH RESPECT TO BONDS
4 SECURED BY HIGHWAY IMPROVEMENT REVENUES PURSUANT TO THIS ARTICLE.

5 ~~B.~~ D. The Bonds ISSUED PURSUANT TO THIS ARTICLE shall not be
6 considered to be a debt of the county or the state within any constitutional
7 or statutory debt limit.

8 ~~C.~~ E. When the bonds ISSUED PURSUANT TO THIS ARTICLE are sold, a
9 schedule shall be filed with the county treasurer showing the amounts of
10 principal and interest to be paid at each principal and interest payment
11 date.

12 ~~D.~~ F. The county shall pledge all or any part of the bridge
13 construction revenues to be received and the county's rights in the BRIDGE
14 CONSTRUCTION intergovernmental agreement to the payment of an amount of the
15 bonds SECURED BY BRIDGE CONSTRUCTION REVENUES. THE COUNTY SHALL PLEDGE ALL
16 OR ANY PART OF THE HIGHWAY IMPROVEMENT REVENUES TO BE RECEIVED AND THE
17 COUNTY'S RIGHTS IN THE HIGHWAY IMPROVEMENT INTERGOVERNMENTAL AGREEMENT TO THE
18 PAYMENT OF AN AMOUNT OF THE BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES.
19 ~~This pledge constitutes~~ THE PLEDGES CONSTITUTE an irrevocable assignment to
20 the officer charged with paying the APPLICABLE bonds that is binding on the
21 county. No notice of the assignment need be filed or recorded and no public
22 notice of any nature is required to make the pledge effective against any
23 person claiming an interest in the bridge construction revenues OR HIGHWAY
24 IMPROVEMENT REVENUES, AS APPLICABLE, except a holder of the bonds. On
25 receipt of any payment of bridge construction revenues OR HIGHWAY IMPROVEMENT
26 REVENUES, the county treasurer shall cause a sufficient portion of the amount
27 received to be deposited in the BRIDGE CONSTRUCTION redemption fund and
28 interest fund, OR THE HIGHWAY IMPROVEMENT REDEMPTION FUND OR INTEREST FUND,
29 established under section 28-7656 pertaining to the APPLICABLE bonds.

30 ~~E.~~ G. No BRIDGE CONSTRUCTION bondholder may claim a preference as to
31 source of payment over any other BRIDGE CONSTRUCTION bondholder of the same
32 series. NO HIGHWAY IMPROVEMENT BONDHOLDER MAY CLAIM A PREFERENCE AS TO
33 SOURCE OF PAYMENT OVER ANY OTHER HIGHWAY IMPROVEMENT BONDHOLDER OF THE SAME
34 SERIES.

35 Sec. 3. Section 28-7654, Arizona Revised Statutes, is amended to read:
36 28-7654. Issuance of bonds

37 A. The county board of supervisors is authorized to issue bonds
38 secured by a pledge of bridge construction revenues.

39 B. THE COUNTY BOARD OF SUPERVISORS IS AUTHORIZED TO ISSUE BONDS
40 SECURED BY A PLEDGE OF HIGHWAY IMPROVEMENT REVENUES.

41 ~~B.~~ C. The ANY bonds ISSUED PURSUANT TO THIS ARTICLE may be issued in
42 one or more series, bear the dates, be payable in the medium of payment and
43 at the places, bear the rates of interest, including variable rates, carry
44 the registration privileges and prior redemption provisions, be executed in
45 the manner, contain the other terms, covenants and conditions and be in the

1 form the board of supervisors prescribes. The bonds shall be sold at, above
2 or below par in the manner as the board of supervisors determines.

3 Sec. 4. Section 28-7655, Arizona Revised Statutes, is amended to read:
4 28-7655. Characteristics of bonds

5 The bonds issued under this article:

6 1. Are fully negotiable within the meaning and for all purposes
7 provided by title 47.

8 2. Are payable only according to their terms from bridge construction
9 revenues OR HIGHWAY IMPROVEMENT REVENUES, AS APPLICABLE, and are not general,
10 special or other obligations of the issuing county or this state. The bonds
11 do not constitute a legal debt of this state and are not enforceable against
12 this state. Payment of the bonds shall not be made from any monies other
13 than those allowed to be pledged.

14 Sec. 5. Section 28-7656, Arizona Revised Statutes, is amended to read:
15 28-7656. Interest fund; redemption fund

16 A. The treasurer of the county issuing the bonds SECURED BY BRIDGE
17 CONSTRUCTION REVENUES shall establish an interest fund and a redemption fund
18 for paying the bonds. The treasurer shall deposit into the funds bridge
19 construction revenues in amounts sufficient to pay the interest and principal
20 of the bonds as they mature. The funds shall be used solely to pay principal
21 and interest on the bonds.

22 B. THE TREASURER OF THE COUNTY ISSUING BONDS SECURED BY HIGHWAY
23 IMPROVEMENT REVENUES SHALL ESTABLISH AN INTEREST FUND AND A REDEMPTION FUND
24 FOR PAYING THE BONDS. THE TREASURER SHALL DEPOSIT INTO THE FUNDS HIGHWAY
25 IMPROVEMENT REVENUES IN AMOUNTS SUFFICIENT TO PAY THE INTEREST AND PRINCIPAL
26 OF THE BONDS AS THEY MATURE. THE FUNDS SHALL BE USED SOLELY TO PAY THE
27 PRINCIPAL AND INTEREST ON THE BONDS.

28 C. THE FUNDS UNDER SUBSECTIONS A AND B SHALL BE ESTABLISHED AND
29 MAINTAINED SEPARATELY AND USED EXCLUSIVELY FOR THE RESPECTIVE PURPOSES FOR
30 WHICH THEY ARE ESTABLISHED.

31 Sec. 6. Section 28-7657, Arizona Revised Statutes, is amended to read:
32 28-7657. Pledge of revenues to secure debt instruments

33 A. Notwithstanding any other provision of this article, a county that
34 receives bridge construction revenues may pledge, by separate covenant
35 included in the resolution authorizing the issuance of any BRIDGE
36 CONSTRUCTION REVENUE bonds under this article or obligations it may incur,
37 future receipts of the revenues to the payment of the BRIDGE CONSTRUCTION
38 REVENUE bonds or to the costs of the bridge. The pledge may be included in
39 the resolution authorizing the issuance of the bonds.

40 ~~B.~~ The resolution authorizing THE ISSUANCE OF the bonds may also
41 authorize assigning bridge construction revenues to a trustee or paying agent
42 to secure the bonds.

43 B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A COUNTY THAT
44 RECEIVES HIGHWAY IMPROVEMENT REVENUES MAY PLEDGE, BY SEPARATE COVENANT
45 INCLUDED IN THE RESOLUTION AUTHORIZING THE ISSUANCE OF HIGHWAY IMPROVEMENT

1 REVENUE BONDS UNDER THIS ARTICLE OR OBLIGATIONS IT MAY INCUR, FUTURE RECEIPTS
2 OF THE REVENUES TO THE PAYMENT OF THE HIGHWAY IMPROVEMENT REVENUE BONDS OR
3 TO THE COSTS OF THE HIGHWAY IMPROVEMENTS. THE PLEDGE MAY BE INCLUDED IN THE
4 RESOLUTION AUTHORIZING THE ISSUANCE OF THE BONDS. THE RESOLUTION AUTHORIZING
5 THE ISSUANCE OF THE BONDS MAY ALSO AUTHORIZE ASSIGNING HIGHWAY IMPROVEMENT
6 REVENUES TO A TRUSTEE OR PAYING AGENT TO SECURE THE BONDS.

7 Sec. 7. Section 28-7658, Arizona Revised Statutes, is amended to read:
8 28-7658. Agreement of state

9 A. This state pledges to and agrees with the holders of the bonds
10 SECURED BY BRIDGE CONSTRUCTION REVENUES AND HIGHWAY IMPROVEMENT REVENUES that
11 it will not limit, alter or impair the rights vested in a county under this
12 article to receive bridge construction revenues OR HIGHWAY IMPROVEMENT
13 REVENUES, AS APPLICABLE, AND AS necessary to produce sufficient revenue to
14 fulfill the terms of any intergovernmental agreements made with the county,
15 or in any way impair the rights and remedies of the bondholders to receive
16 ~~bridge construction~~ THE NECESSARY revenues, until all THE APPLICABLE bonds
17 issued under this article, are fully met and discharged.

18 B. The county may include this pledge and undertaking in its
19 resolutions and indentures securing the bonds under this article.

20 Sec. 8. Section 42-5032, Arizona Revised Statutes, is amended to read:
21 42-5032. Distribution of bridge construction revenues to
22 county; definitions

23 A. ~~Through June 30, 2010,~~ If, by June 30, 1998, the department of
24 transportation enters into an intergovernmental agreement pursuant to section
25 28-401, SUBSECTION C or section 28-7652, SUBSECTION A for the construction
26 of a bridge, the state treasurer shall pay each month, beginning from and
27 after June 30, 1998 THROUGH JUNE 30, 2010, pursuant to section 42-5029,
28 subsection D, paragraph 4, one-twelfth of the amount determined under THIS
29 subsection ~~B of this section~~ to a county that issues bonds pursuant to title
30 28, chapter 21, article 4 or enters into an intergovernmental agreement
31 pursuant to section 28-401, SUBSECTION C.

32 ~~B.~~ The amount to be paid under THIS subsection ~~A of this section~~ is
33 the amount of state transaction privilege tax revenues received each calendar
34 year, up to four hundred sixteen thousand six hundred sixty-seven dollars,
35 from TAXPAYERS DESCRIBED IN SUBSECTION C OF THIS SECTION.

36 B. IF, BY DECEMBER 30, 2004, THE DEPARTMENT OF TRANSPORTATION ENTERS
37 INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO SECTION 28-401, SUBSECTION
38 D OR SECTION 28-7652, SUBSECTION B FOR THE DESIGN, RECONSTRUCTION AND
39 IMPROVEMENT OF A COUNTY HIGHWAY APPROACHING AND TRAVERSING A BRIDGE FINANCED
40 PURSUANT TO SUBSECTION A OF THIS SECTION, THE STATE TREASURER SHALL PAY EACH
41 MONTH, BEGINNING FROM AND AFTER JUNE 30, 2007 THROUGH JUNE 30, 2019, PURSUANT
42 TO SECTION 42-5029, SUBSECTION D, PARAGRAPH 4, ONE-TWELFTH OF THE AMOUNT
43 DETERMINED UNDER THIS SUBSECTION TO A COUNTY THAT ISSUES BONDS PURSUANT TO
44 TITLE 28, CHAPTER 21, ARTICLE 4 OR ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT
45 PURSUANT TO SECTION 28-401, SUBSECTION D. THE AMOUNT TO BE PAID UNDER THIS

1 SUBSECTION IS THE AMOUNT OF STATE TRANSACTION PRIVILEGE TAX REVENUES RECEIVED
2 EACH CALENDAR YEAR, UP TO FOUR HUNDRED SIXTEEN THOUSAND SIX HUNDRED
3 SIXTY-SEVEN DOLLARS, FROM TAXPAYERS DESCRIBED IN SUBSECTION C OF THIS
4 SECTION. IF AN OWNER OF A SPORTS ENTERTAINMENT FACILITY DESCRIBED IN THIS
5 SECTION VOLUNTARILY CONVEYS A MAJORITY OWNERSHIP INTEREST IN THE FACILITY TO
6 ANOTHER ENTITY OR OWNER ON OR BEFORE JUNE 30, 2014, THE COUNTY MUST REIMBURSE
7 THE STATE GENERAL FUND THE AMOUNT PAID TO THE COUNTY PURSUANT TO THIS
8 SUBSECTION THROUGH THE DATE OF THE CONVEYANCE, EITHER BY WITHHOLDING
9 TRANSACTION PRIVILEGE TAX REVENUES OTHERWISE PAYABLE TO THE COUNTY UNDER
10 SECTION 42-5029, SUBSECTION D OR AS OTHERWISE PROVIDED BY THE
11 INTERGOVERNMENTAL AGREEMENT ENTERED INTO PURSUANT TO SECTION 28-401,
12 SUBSECTION D. THE REIMBURSEMENT OF MONIES TO THE STATE GENERAL FUND PURSUANT
13 TO THIS SUBSECTION DOES NOT AFFECT THE CONTINUING PAYMENT OF HIGHWAY
14 IMPROVEMENT REVENUES TO THE HIGHWAY IMPROVEMENT INTEREST FUND OR THE
15 REDEMPTION FUND UNDER SECTION 28-7656, SUBSECTION B. FOR THE PURPOSES OF
16 THIS SUBSECTION, A CONVEYANCE OCCURS ON THE DATE A TRANSFER OF OWNERSHIP OR
17 AN OPTION TO ACQUIRE OWNERSHIP BECOMES IRREVOCABLE.

18 C. THIS SECTION APPLIES WITH RESPECT TO TRANSACTION PRIVILEGE TAX
19 REVENUES COLLECTED FROM all persons conducting business under any business
20 classification under this article at a sports entertainment facility,
21 destination resort or retail center that both COMPLIES WITH ALL OF THE
22 FOLLOWING:

23 1. Produces a total of at least six hundred thousand dollars each year
24 in transaction privilege tax revenues to this state pursuant to this article.

25 2. Will acquire direct county highway access EITHER:

26 (a) Across a river by the bridge constructed.

27 (b) BY WAY OF THE COUNTY HIGHWAY BEING WIDENED AND IMPROVED.

28 3. PRODUCES AT LEAST NINE HUNDRED THOUSAND DOLLARS IN EACH OF THE
29 YEARS 2007 THROUGH 2011 IN TRANSACTION PRIVILEGE TAX REVENUES TO THIS STATE.

30 ~~C.~~ D. The department shall report the amount under subsection
31 SUBSECTIONS A AND B of this section to the state treasurer on or before March
32 31 of each year for payment for the following fiscal year.

33 ~~D.~~ E. For purposes of this section:

34 1. "Destination resort" means a person engaged in businesses
35 classified under both the transient lodging classification and the amusement
36 classification that provides on-site recreational facilities such as a golf
37 course, tennis courts or a riding stable.

38 2. "Retail center" means a complex consisting of at least two
39 businesses classified under the retail classification.

40 3. "Sports entertainment facility" means a complex located on at least
41 three hundred acres that requires a ticket for admission for viewing a
42 sporting event.

1 Sec. 9. Conditional enactment; notice

2 A. This act does not become effective unless a sports facility, as
3 defined by section 42-5032, Arizona Revised Statutes, is selected as the site
4 of an additional major national sporting event by December 31, 2004.

5 B. On or before December 31, 2004, the director of the department of
6 revenue shall notify the director of the legislative council whether this
7 condition occurred.

APPROVED BY THE GOVERNOR MAY 3, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2004.